COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 771 of 2001
Old No. 1137 of 2000

Major Parvesh Ahuja (Retd.) … **Appellant.**

Versus

Kalu Ram
And another. … **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 22-7-1999, passed in M.A.C.T. Case No. 6 of 1997, Major Parvesh Ahuja (Retd.) Vs. Kalu Ram and others, by the Motor Accident Claims Tribunal/District Judge, Hardwar ***(hereinafter referred to as the Tribunal),*** whereby the learned Tribunal has awarded a sum of Rs. 2,95,000/- along with simple interest @ 12% per annum in favour of the claimant-appellant. Aggrieved, the claimant has come up in appeal with a prayer to enhance the quantum of award and to set aside the impugned judgment and award mainly on the ground that the quantum of award is quite insufficient and inadequate keeping in view the nature of injuries sustained by the appellant in the motor accident and the finding of the court below that the accident in question was result of vis-major and natural calamity is against the evidence on record and the finding on the issue of rash and negligent driving by the driver of offending truck is perverse and liable to be quashed.

Brief facts, giving rise to the present appeal, are that on 16-1-1996, the claimant-appellant was coming from Noida to Hardwar by his own car No. DL 3 CF-3431. At about 4.30 p.m., when the claimant who was driving the Maruti Car himself, was in the way between Rookee- Hardwar road about 1.5 km. Away from

Solani Bridge, the offending truck bearing no. USK-6800 driven rashly and negligently by its driver collided with the Maruti car, thereby throwing it about 20 ft. away into a ***Khadd,*** with the result the claimant sustained grievous head injuries and fracture of pelvis bone, etc. The claimant was rushed to the Civil Hospital Roorkee for treatment. F.I.R. of the accident was lodged by Arun Ahuja. The claimant was thereafter treated at Vardhaman Trauma Centre Muzaffarnagar. Subsequently, for better treatment, he got treatment at Batra Hospital, New Delhi, where the claimant had undergone two operations. It has been asserted that the claimant has become permanently disabled due to the injuries sustained by him. It has been alleged that huge amount of money was incurred in the treatment, therefore, claim has been preferred for compensation of Rs. 19,98,000/-.

O.P.No.1 Kalu Ram filed written statement and contested the claim petition. It has been admitted by the O.P. No.1 that he is the owner of the truck in question and insurance of the vehicle with the O.P. No.2. Rest of the allegations have been denied. It has been pleaded in the additional pleas that no cause of action arose in favour of the claimant against the O.P. for the claim; that the vehicle/truck was being driven by a skilled driver, who was having valid driving licence. The accident in question occurred as an act of God and not on account of rash and negligent driving by the driver of the truck. It has also been stated that all necessary documents were held by the O.P. in the respect of the truck in question.

O.P.No.2, New India Assurance Company, also contested the claim petition by filing its separate written statement on the ground inter alia that the Insurance Company is the insurer of the truck in question and its liability is limited under the provisions of the Act. It has been pleaded that the petition has been filed in collusion with the owner of the truck and that the claimant has not sustained any injury in the accident; that the age and income of the

claimant have been wrongly mentioned; that the truck owner was not possessing valid documents in respect of the vehicle and the driver thereof was not holding a valid driving licence. The accident has occurred due to own negligence and rashness on the part of the car driver.

The O.P.No.3, insurer of the Maruti Car, i.e. National Insurance Co. also contested the case by filing its written statement. It has pleaded that the offending truck was overloaded and the driver was driving the truck carelessly on wrong side. Plea of bar by estoppel, waiver and acquiescence has been filed on wrong facts; that the accident took place due to rash and negligent driving by the truck driver, which hit the Maruti Car; that the driver of Maruti Car was not holding valid papers including the valid driving licence. The liability to pay compensation rests on the owner and insurer of the offending truck.

The Tribunal has framed four issues in the case. Issue No.1 related to rash and negligent driving by the driver of the offending truck resulting into grievous injuries to the claimant thereby he became disabled. Issue No.2 related to holding of valid driving licence by the driver of Maruti Car. Issue Nos. 3 and 4 related to compensation and relief. The learned Tribunal has come to the conclusion on Issue No.1 that the motor accident resulting into injuries and consequent disability to the claimant has occurred due to rash and negligent driving by the driver of the offending truck. On Issue No.2, the Tribunal has found that Photostate copy of the driving licence of the car driver is on record as paper no. 13-C, therefore, it has been held that the claimant was holding a valid driving licence at the time of accident. After considering the entire oral and documentary evidence on record has held that the claimant is entitled to get Rs. 80,000/- towards medical expenses including ambulance charges, Rs. 40,000/- towards loss of income for eight months, Rs. 15,000/- towards conveyance and lodging charges, sum of Rs.

10,000/- towards expenses on attendants and sum of Rs. 1,50,000/- compensation towards physical and mental pain and suffering and uncertainties of future. Thus, total compensation of Rs. 2,95,000/- has been awarded along with simple interest @ 12% per annum, as mentioned in the impugned judgment and award.

We have heard Mr. Paresh Tripathi, learned counsel for the claimant-appellant as well as learned counsel for the New India Assurance Company, Mr. D.K.Sharma and have carefully examined the entire material on record.

It has been submitted on behalf of the appellant before us that the learned Tribunal has not considered the nature of injuries leading to permanent disability sustained by the claimant in the accident and the quantum of compensation is insufficient vis-à-vis the expenses incurred by the claimant-appellant in his treatment in various hospitals.

After having gone through the entire proceedings and the record of the Tribunal, we find that each and every document filed in support of the medical expenses. In the claim petition, the claimant has mentioned his monthly income as Rs. 10,000/-. It is not disputed that the claimant-appellant was an income tax payee, but surprisingly enough the claimant has not filed any document worth the name to show his actual income at the time of accident. To assess the loss in the income as a result of disability of the claimant, documentary evidence was required to have been brought on record. It is also not disputed that the claimant has come on premature retirement from the Army prior to the accident, where he was holding the rank of Major on medical ground, therefore, there is no apparent loss of pension benefits, etc. to the claimant. It has been argued before us that the appellant has incurred loss to the tune of Rs. Two lacs per year due to the accidental injuries. Had the claimant filed statement of income and debit in respect of his business, i.e. Ahuja Service Station Hardwar for the relevant years,

then the prayer on that count would have some force. It is not the case of the appellant that he has been deprived of filing the relevant documentary evidence on record for want of sufficient opportunity. From the perusal of the original record, it is evident that the Issues in the case were framed on 30.4.1997 and argument for the first time was heard in the case on 2.4.98 and 21.4.98 was fixed for delivery of judgment. Thereafter, vide application 63-C the claimant made request for opportunity to prove the documentary evidence. However, this prayer was declined on the ground that the said application has not been pressed at the time of argument. The Tribunal has allowed the prayer made by the claimant vide application 66-C to admit additional documentary evidence on record. The application was allowed on payment of cost on 5.5.1998. Subsequently, on the application for permission to file papers (80-C) moved on 22.6.98 was also allowed vide order dated 6.7.98. All these proceedings before the Tribunal clearly shows that sufficient opportunity has been afforded to the appellant to file documents on record. The evidence of the claimant was recorded before the Tribunal on 13.1.1998. We have carefully perused the entire on oath statement of the claimant (P.W.1) and we find that not a single word has been stated by him regarding loss of income in the business. This witness was again re-examined on fresh oath on 28.5.1998. Even then, this witness has not filed any document to show downfall in his business, though he has stated that he has incurred loss of Rs. Two lacs per year on that count. Moreover, the claimant-appellant has not moved any application under Order 41, Rule 27 of the C.P.C. before this court for permission to file additional evidence at the stage of appeal. It is the settled principle of law that the fact which requires documentary proof must be supported by the documents. This witness has admitted in his cross-examination that accounts are maintained in respect of Petrol Pump and Ahuja Motors. It has been stated by him that the persons engaged in the care of these businesses earlier are still there, therefore, it appears that no substantial loss was incurred by the claimant towards loss of business. The Tribunal has elaborately

considered the evidence on record. The learned counsel for the appellant could not point out any infirmity or illegality in the impugned judgment and award.

In view of the discussion above, we find no merit in the argument advanced on behalf of the appellant. The learned Tribunal has given reasons for awarding compensation towards different heads in the impugned judgment and award. We have already narrated the amounts of compensation awarded by the Tribunal in the earlier part of the judgment. Nothing came to our notice so as to warrant any interference in the findings of the Tribunal, whereby compensation of Rs. 2,95,000/- along with interest @ 12% per annum has been awarded from the date of petition, i.e.10.1.1997. In our opinion, this amount of compensation appears to be just and adequate to meet the ends of justice in the present case.

Ultimately, the appeal fails on merits.

The appeal is dismissed. The judgment and award, under appeal, is upheld. No order as to costs.

28.08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP